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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,405

01/23/2004

John Chen

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EXAMINER

HALL, DEANNA K

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

01/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/764,405	Applicant(s) CHEN ET AL.	
	Examiner DEANNA K. HALL	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-11,14-16,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-11,14-16,19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/4/09 has been entered.

Acknowledgments

2. This office action is in response to the reply filed 11/4/09.

3. In the reply, the applicant amended claims 1, 8-11, 14-16, 19; canceled claims 6-7, 12-13, 17-18. Claims 1-5, 8-11, 14-16, 19-20 are pending in the application.

Claim Objections

4. Claim 14 is objected to because of the following informalities: For the sake of consistency, it is unclear whether the reading of claim 14 as being a first tie layer is proper or whether it should read "second tie" layer. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 8-11, 14-16, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters et al. (US 5,549,552) in view of Mugge et al. (US 5,478,620).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Peters discloses a balloon catheter assembly and method comprising: a first tubular member 34 having a proximal portion and a distal portion with a lumen 43 extending between the proximal portion and the distal portion; a balloon 37 having a proximal waist length 38, a distal waist length 39 and an expandable region 45 disposed

about the distal portion; and a tie layer 47 disposed between the proximal waist length or distal waist length and the first tubular member C9 L17-22, C5 L30-36.

Peters discloses the invention as substantially claimed (see above). However, Peters does not directly disclose the tie layer comprising a polyester polymer layer disposed on a polyamide layer, the polyamide layer disposed between the polyester layer and the first tubular member. Mugge teaches, in addition to 3 layer pipes, pipes that can be manufactured with 5 or 7 layers, thus the 5 or 7 layer pipes having more than one intermediate layer C3L54-57. Components for the intermediate layers are taught in Mugge as Z1, Z2, Z3, Z4 and Z5. The polyamide layer comprises a copolymer of polyester and polyamide (see claim 3) and the polyester layer comprises a polybutylene terephthalate (Z1, Z2, Z3). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Peters with the two tie layers as taught by Mugge to ensure proper bonding of the layers to the inner tube and to each other since the layers are or can be all made of dissimilar materials C8L15-19, C6L66-C7L5. Further, the order of the tie layers would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

In reference to claims 2-5, Peters discloses that alternative materials as known to those skilled in the art can be used for the tubular member and the balloon C3 L37-42.

The balloon can be formed from an aromatic polyester or a PET and the tubular member can be formed from a polyamide or a polyether block amide C6 L54- C7 L5.

Response to Arguments

7. Applicant's arguments have been fully considered but they are not persuasive. Applicants arguments have been addressed in the above rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEANNA K. HALL whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 9:00am-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deanna K. Hall/

Examiner, Art Unit 3767

1/19/10

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767